

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROSS O'NEILL,	)	Case No. RIF-99-0005
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
SEATTLE COMMUNITY COLLEGE,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and LEANA D. LAMB, Member. The hearing was held at the Seattle Community College, Siegel Center, 1500 Harvard Avenue, Seattle, Washington, on June 14, 2000. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

**1.2 Appearances.** Appellant Ross O'Neill was present and was represented by Evelyn Gershen, Area Representative for the Washington Federation of State Employees. Respondent Seattle Community College was represented by James R. Tuttle, Assistant Attorney General.

**1.3 Nature of Appeal.** This is an appeal from a reduction in force for lack of work.

**1.4 Citations Discussed.** WAC 251-10-030; RCW 41.06.150(10); O'Gorman v. Central Washington University, PAB No. L93-018 (1995).

## II. FINDINGS OF FACT

2.1 Appellant Ross O'Neill was an Offset Duplicator Operator and permanent employee for Respondent Seattle Community College. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 19, 1999.

2.2 Appellant became employed as an Offset Duplicator Operator (ODO) in the District Printing Department in 1975. The ODO position was the only classification in which Appellant held permanent status.

2.3 The District Printing Department, which was operated by the District Office, employed five full-time employees, including the Director, a Photo Lithographer, an Offset Duplicator Operator, an Offset Printer Operator and a Transportation Helper.

2.4 The District Office is one of several layoff units within the Seattle Community College District.

2.5 The work produced at the District Printing Department consisted primarily of large volumes of letterhead, a variety of envelopes and forms, and one and two color brochures and covers. The Printing Department did not have the equipment necessary to fill requests for higher volume work and these jobs were bid to outside printers. Because the individual college departments were not required to use the District Printing Department for their copying requests, the majority of the work performed at the Printing Department was in relatively small quantities.

2.6 As changes in copying technology emerged, the District Printing Department received fewer requests for jobs requiring use of the offset duplicating machine operated by Appellant and began to receive jobs for "quick copy" work. In the mid to late 1990s, copy centers were established at each of

1 the college campuses. The copy centers were convenient to students and college departments and  
2 provided faster service than the Printing Department. As a result, the copy centers began to receive a  
3 large amount of the quick copy work previously performed by the District Printing Department. The  
4 copy centers, which were located at the North, South and Central Campuses, were managed by the  
5 District Printing Department. The copy centers also fall within the District Office layoff unit.

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7 2.7 The copy centers each had one full-time employee. The District Printing Department provided  
8 staff support for the copy centers in cases of absences or when additional help was needed.

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10 2.8 In 1998, Jim St. Germain, Vice Chancellor for the Business and Finance Department, reviewed  
11 the volume of work produced in the District Printing Department and the copy centers. The findings of  
12 his review showed a significant drop in impressions produced by the District Printing Department from  
13 9 million impressions in 1993 to an estimated less than 3 million for 1998. Mr. St. Germain observed a  
14 corresponding increase in copy impressions made at the copy centers which exceeded 10 million  
15 impressions from 1997-1998. Mr. St. Germain concluded that the significant decrease in the  
16 impressions made at the District Printing Department was a result of the copy centers receiving copy  
17 work that was previously done by the Printing Department.

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19 2.9 Based on the large decline in the volume of printing produced at the District Printing  
20 Department and the lack of requests for print jobs using the offset duplicating machine, Mr. St. Germain  
21 considered updating the facility's equipment for the District Printing Department. After performing a  
22 cost analysis, he concluded that it would cost approximately half a million dollars to purchase new  
23 equipment. However, he determined there was insufficient business generated to support that purchase.  
24 Mr. St. Germain concluded that the cost of updating the equipment would not be cost effective.

1 2.10 Due to the reduced volume of printing at the District Printing Department and the high cost of  
2 updating the Printing Department's duplicating equipment, District administration closed the District  
3 Printing facility. The elimination of the District Printing Department resulted in the elimination of the  
4 Offset District Operator and Offset Printer Operator positions. As a result, several positions were  
5 designated for elimination, including the position held by Appellant.

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7 2.11 The District Office continued to manage the three college copy centers.

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9 2.12 Respondent's Vice Chancellor of Human Resources, Albert Crusoe, reviewed Appellant's  
10 employment history to determine what layoff options were available to Appellant. Mr. Crusoe  
11 concluded that no other Offset Duplicator Operator positions existed within Appellant's layoff unit. In  
12 addition, Mr. Crusoe reviewed positions at the same or lower level salary within Appellant's layoff unit,  
13 however, he determined that no such options were available within the District Office unit. Mr. Crusoe  
14 also expanded his search beyond the District Office layoff unit to North Seattle, Central Seattle, and  
15 South Seattle Community Colleges. He concluded that no Offset Duplicator Operator positions existed  
16 in those layoff units.

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18 2.13 At the time of the Printing Department's closure, the copy center located on the North college  
19 campus had a vacant Copy Machine Operator position. Both Appellant and Mr. Tu were qualified to fill  
20 the Copy Machine Operator position.

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22 2.14 Mr. Crusoe was aware that the Copy Machine Operator position at the North Campus was  
23 vacant, was a lower level position than the Offset Duplicator Operator position, and that Appellant was  
24 qualified for the position. However, under his interpretation of the department's layoff rules, Mr. Crusoe  
25 concluded that seniority was not the primary determinant to fill the position. Therefore, Mr. Crusoe  
26 concluded that Appellant had no layoff options.

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2 2.15 Donny N. Tu was the Offset Printer Operator at the Printing Department. Mr. Tu was hired into  
3 his position in 1987. Mr. Tu had less layoff seniority than Appellant and like Appellant, he held status  
4 in no other positions.

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6 2.16 When filling the Copy Machine Operator position, Mr. St. Germain reviewed the qualifications  
7 of Appellant and Mr. Tu to the duties of the position. Mr. St. Germain concluded that although the  
8 position was less technical than the positions held by Appellant and Mr. Tu, he believed there were  
9 additional skills required to work successfully in the job, including customer service skills to work with  
10 the public, experience handling money and the ability to work independently. Based on the job  
11 requirements of the Copy Machine Operator position, Mr. St. Germain selected Mr. Tu to fill the  
12 position because he felt that Mr. Tu better fit the needs of the position. Mr. St. Germain's interpretation  
13 of the department's layoff policy was that seniority was not a criteria necessary to take into  
14 consideration to fill the position.

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16 2.17 By letter dated February 16, 1999, Dr. Peter Ku, Chancellor for Seattle Community College  
17 District and the appointing authority, notified Appellant that his position as an Offset Duplicator  
18 Operator would be eliminated effective March 12, 1999, for lack of work, in accordance with WAC  
19 251-10-030. He also informed Appellant that there were no other positions available to him at a range  
20 equal to or lower than his current position, that he had no reduction in force options, that his name  
21 would be placed on the institution-wide layoff list for the class of Offset Duplicator Operator, and that  
22 he could have his name placed on the statewide layoff list for classes in which he had held permanent  
23 status or equivalent classes.

24  
25 2.18 On February 16, 1999, Mr. Tu was also advised that his position as an Offset Printer Operator  
26 was being eliminated due to a lack of work effective March 12, 1999. Mr. Tu was offered the Copy

Machine Operator position at the North Campus copy center in lieu of layoff. Mr. Tu accepted and was placed in the position.

2.19 On March 11, 1999, Appellant was advised of his revised option in lieu of layoff which was to accept a 50 percent Custodian position in the Facilities Department at the North Campus. Appellant declined this layoff option, and instead requested that his name be placed on the institution-wide layoff list for the position of Offset Duplicator Operator.

2.20 RCW 41.06.150 grants the Washington State Personnel Resources Board the authority to adopt rules. Subsection 10 of the statute outlines the basis and procedures to be followed for layoffs and mandates that layoffs and subsequent reemployment shall both be according to seniority.

2.21 WAC 251-10-025, Layoff seniority, states as follows:

(1) Layoff seniority is used to determine which employee(s) will be affected by a layoff.

(2) Layoff seniority is the number of calendar days an employee has been continuously employed in the classified service.

(3) Layoff seniority is based on the earliest date of continuous classified service. . . .

2.22 Seattle Community College has adopted a Reduction-In Force Policy which indicates as follows:

429.40 Order of Layoff

429.40.1 Once the decision has been made to eliminate a given position within a layoff unit, layoff of affected permanent employees will be made in inverse order to layoff seniority.

429.50 Options in Lieu of Layoff

Within a layoff unit permanent status employees who are scheduled for layoff may be entitled to exercise one of several options in lieu of layoff.

1 429.50.1 Options shall first be offered permanent status employees in  
comparable positions as follows:

- 2 a. Classes in which the employee currently holds or has previously  
held permanent status, having the same or lower salary range  
3 maxims as the current class;  
4 b. Lower classes in the same series for which the employee is  
qualified.

5 . . . .

6 429.50.2 Permanent employees . . . who have no available options as  
described above will be offered at least three positions from the highest  
7 available classes (unless the total available is less than three) provided that any  
positions offered must be:

- 8 a. At the same level or lower than the class from which the  
employee is being laid off;  
9 b. Vacant or held by a provisional, temporary or probationary  
employee, and;  
10 c. In a class for which the employee being laid off meet the  
minimum qualifications and can pass the appropriate  
11 qualifying examination.

12 . . .

### 13 **III. ARGUMENTS OF THE PARTIES**

14 3.1 Respondent argues that the closure of the Printing Department resulted from a lack of work and  
15 constituted a basis for Appellant's layoff. Respondent argues that the reasons for the Printing  
16 Department's elimination resulted from a fifty percent drop in the volume of work requested from the  
17 department. Respondent argues that based on a legitimate lack of work, it eliminated the District  
18 Printing Department and that the department subsequently made good faith efforts to provide Appellant  
19 with layoff options. Respondent argues that no other positions in the Offset Duplicator Operator  
20 classification existed and Appellant had no other bumping options. Respondent argues that under its  
21 layoff policy, it did not have to take Appellant's seniority into consideration when offering the Copy  
22 Machine Operator position to a less senior employee.

24 3.2 Appellant does not dispute the reasons for the Printing Department's closure, however, he argues  
25 that Respondent did not take his seniority into consideration when applying their layoff policy and as a  
26 result, they failed to provide him with the appropriate layoff options. Appellant argues that based on

1 his seniority and qualifications, he should have been offered the vacant Copy Machine Operator  
2 position.

#### 3 4 IV. CONCLUSIONS OF LAW

5 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
6 herein.

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8 4.2 Respondent may layoff an employee for lack of funds or lack of work. WAC 251-10-030(1). In  
9 an appeal of a layoff or reduction-in-force action, Respondent has the burden of proof. WAC 358-30-  
10 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the  
11 employee off for the reasons stated in the RIF letter. O’Gorman v. Central Washington University,  
12 PAB No. L93-018 (1995).

13  
14 4.3 The first issue here is whether Respondent complied with WAC 251-10-030(1) when it laid off  
15 Appellant because of a lack of work. WAC 251-10-030(1), in part, permits an appointing authority to  
16 layoff or reduce the number of working hours or the work year of an employee because of a lack of  
17 work. Respondent has provided credible evidence that there was a legitimate lack of work at the  
18 Printing Department which resulted in the elimination of the department and a lack of work.  
19 Respondent has met its burden of proof that it complied with WAC 251-10-030(1) when it eliminated  
20 Appellant’s position due to a lack of work in the Printing Department.

21  
22 4.4 The second issue presented is whether Respondent provided Appellant with appropriate layoff  
23 options. WAC 251-10-030, subsection, (4) indicates:

24  
25 Within the layoff unit, a permanent status employee scheduled for layoff shall be  
26 offered employment options to position(s):

(a) For which he/she meets any specific position requirements;

(b) Which are comparable, as determined by the personnel officer; and



(c) Which are in:

- (i) Class(es) in which the employee has held permanent status which have the same or lower salary range maximum as the current class;
- (ii) Lower class(es) in those same class series for which the employee is qualified.

The employee may exercise either option subsection (4) (c) (i) or (ii) of this section provided that the employee being replaced is the least senior in a comparable position in the class and has less layoff seniority than the employee replacing him/her. . . .

4.5 Respondent correctly determined that Appellant had no layoff options under this portion of the statute. Furthermore, subsection (5) of the rule indicates:

. . . a permanent employee scheduled for layoff who has no options available under subsection (4) of this section shall be offered position(s) as follows:

(a) The personnel officer will offer in writing not less than three positions from among the highest available classes (unless the total available is less than three); provided that any position(s) offered must be:

(i) At the same level or lower than the class from which the employee is being laid off; and

(ii) Vacant or held by a provisional, temporary, or probationary employee; and

(iii) In a class for which the employee being laid off meets the minimum qualifications and can pass the appropriate qualifying examination.

4.6 The Copy Machine Operator position was within Appellant's layoff unit. Under Respondent's interpretation of their policy, 429.50.2, seniority was not a factor necessary to consider when filling the position. Respondent argued, therefore, that it was not required to offer Appellant the position and that it appropriately offered and subsequently appointed Mr. Tu to the position. However, both Respondent's policy, Section 429.50.2, and WAC 251-10-030(5) require Respondent to offer Appellant any available positions from the highest available classes at the same or lower level from which Appellant is laid off and for which he meets the minimum qualifications as long as the position is vacant or held by a non-permanent status employee. The Copy Machine Operator met all these criteria. Furthermore, RCW 41.06.150(10) requires that layoff and subsequent **reemployment** shall both be according to seniority. Here, where both Appellant and Mr. Tu were laid off on the same date, where both Appellant and Mr. Tu were equally qualified for the position, and where Appellant was the most

1 senior employee, we conclude that Appellant should have been offered the Copy Machine Operator  
2 position.

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4 4.7 Respondent has failed to meet its burden of proof, and the appeal should be granted.

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6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Ross O'Neill is granted.

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9 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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11 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Leana D. Lamb, Member

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